



FLETCHER VAUTIER MOORE
LAWYERS

LAWS *of* SUCCESS

THE NEWSLETTER *of* FLETCHER VAUTIER MOORE, LAWYERS

APRIL 2004

Welcome



We are now working from our newly leased offices at Level 1, 126 Trafalgar Street.

Our main entrance is located between the Cheapskates and Shanton shops on Trafalgar Street. For those clients who may have difficulty with the stairs, a lift is available in our main entrance foyer. Metered carparks are located on Trafalgar Street, at the rear of the building in the Wakatu Carpark, and in the Millers Acre Carpark nearby.

Naturally we are pleased with our new accommodation as it has enabled us to address the numerous deficiencies that existed at our old building. We are now able to provide sufficient working space for our staff and confidential client interview areas.

Our contact details remain unchanged and are listed on the back of this newsletter for your convenience.

We look forward to providing you with improved service and comfort at our new premises.

Steve Fraser
Business Manager

Open Day

On Saturday 24th January 2004 we held an open day for clients and business associates to look through our new premises. Over 80 people enjoyed a guided tour of the building followed by light refreshments and an informal chat. One comment we received the most from visitors was their surprise at the size of our office space, and that they had no idea our Nelson Office had so many staff. We currently have 36 Nelson Office staff and occupy 80% of the top floor, with the remaining 20% being sublet. Within Fletcher Vautier Moore's area, most offices and workstations have been filled.

A number of our staff volunteered to assist on the day as tour guides and with the preparation of refreshments. Below is a photo of some of those staff members. Overall it was a very successful event which we were pleased to be able to host.



(L to R) Diane Searle, Paula Welsh, Correne Brewerton, Maurice Higgs, Shelley Horrell and Maria Cole.

Contents

- 1 Welcome 1 Open Day 2 Relationships of Short Duration 2 Wine Draw - Congratulations
3 New Office at Havelock 3 Dog Control 4 Holidays Act 2003 Update 4 Staff Announcements

Relationships of Short Duration

The Property (Relationships) Act 1976 ("the Act") has been in place since February 2002 and the Courts are slowly gathering a collection of decisions to guide practitioners and their clients through the new provisions and issues that were introduced.

An interesting case has come from the Deep South dealing with relationships of short duration for unmarried partners (usually less than three years).

There is a distinction made between relationships of short duration between married and unmarried partners. For married partners, the Court will divide their relationship property according to the respective contributions to the relationship of each partner. For unmarried partners, the Court does not have jurisdiction to divide their property unless:

- There is a child of the relationship; or
- The applicant has made a substantial contribution to the relationship; and
- In either case the Court is satisfied that the lack of an order will result in serious injustice.

The presence of a child or a substantial contribution will not necessarily be a reason for the Courts to find that serious injustice will result.

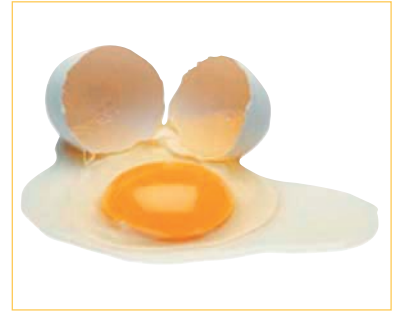
What is Needed?

For an application of this type, the Court will need detailed and specific information about the likely result and degree of injustice that would result if the Court refused to intervene.

Section 15 of the Act empowers the Court to award lump sum payments or transfer property to one party where 'economic disparity' exists. Economic disparity arises if, on the division of relationship property, the income and living standards of one partner are likely to be significantly higher than those of the other partner because of the effects of the division of functions or roles within the relationship.

The birth of a child may be the key to a successful application under section 15 if one parent is unable to pursue a career by having to assume the primary caring position. If the Court refuses to intervene it would, in effect, block any application under section 15 to address economic disparity. On the other hand, the Child Support Act 1991 could provide relief through availability of financial support.

A significant disparity in contributions may be sufficient for the Court to intervene. However, prior to the changes in the Act, de facto partners (who were not covered by the legislation) had to rely on arguments that a



"constructive trust" had been established in order to be granted a share of the property, and that may still be the case. A "constructive trust" is created where a person made contributions to the other's property and had a reasonable expectation that he or she would receive a share of the property in return for the contributions.

In the case from the Deep South, the Judge stated that a combination of factors, each not necessarily in itself amounting to a serious injustice, might together add up to a serious injustice.

Unfortunately for the applicant in this case, she failed to satisfy the serious injustice test, despite the birth of a child during the relationship.

We may have thought that with new legislation, many of the old principles and arguments would no longer apply. However, this decision emphasises the many complexities of the old legislation and common law which have carried through.

Source: Client Legal Newsletter, Waikato University

Wine Draw - Congratulations

We received a tremendous response from clients in terms of returning the database forms that we sent out prior to Christmas. We were delighted with a 35% response rate, given Christmas and New Year is traditionally a busy period for most people.

As a reward for taking the time to verify the information and return these forms, we offered a dozen bottles of Nelson wines for one lucky client who had returned their form. In view of the positive response, we have decided to make two additional draws for a gift basket each.

The lucky winners have kindly allowed us to include their names in the newsletter. Mr David and Mrs Christine Marrs of Motueka are the winners of the wine, with the gift baskets going to Mrs Doreen Snow of Stoke and Mr Brian and Mrs Daphne Bryce of Motueka. Congratulations and thank you to all our clients who helped us to update our database.

New Office at Havelock



As from Friday 23 April 2004, Fletcher Vautier Moore will be opening an office in Havelock to service the needs of the Havelock, Rai Valley, Renwick & Sounds communities.

We have secured office premises at 65A Main Road, Havelock and will have legal staff attending the office every Friday. To arrange an appointment, or for general enquiries, please telephone either our Nelson Office, or Havelock (03) 574 1390 (which is connected to our Nelson Office for the days Havelock is unattended).

The Havelock Office will be electronically linked to our existing three offices allowing full communication with one another. We look forward to providing a full range of legal services to existing and new clients.

Dog Control

In late 2003 the Dog Control Act ("the Act") was significantly changed by the Dog Control Amendment Act 2003, in response to a number of publicised attacks on children.

Purpose

The Act aims to:

- Provide councils with greater powers and additional obligations in relation to their dog control policies and practices;
- Place greater responsibility on dog owners; and
- Bring in measures such as micro-chipping of dogs and the classification of certain breeds of dogs as 'dangerous and menacing' to help meet the above purposes.

Some changes took effect on 1 December 2003. The remaining changes take effect on 1 June 2004 and 1 June 2006.

Key Changes

A council now has the ability to class a dog as a 'menacing dog' on the basis of either:

- Observed or reported behaviour of the dog; or
- Any characteristic typically associated with that dog's breed or type. Dogs listed in this category cannot be bred or imported into New Zealand and include American Pit Bull Terriers, Dogo Argentino, Japanese Tosa, and the Brazilian Fila.

Where a dog is deemed to be a menacing dog, it must be muzzled in public and, if the local council so requires, it must be neutered.

Dangerous Dogs

The actions of a dog can in some circumstances result in the dog being classified as a 'dangerous dog' under the Act. Dangerous dogs must also be muzzled in public and neutered, and are subject to increased registration fees. Failure to muzzle or neuter will likely result in an order for destruction of the dog if the owner is successfully prosecuted.

All dog owners must now carry or use a leash at all times (on the dog - not the owner!)

Powers of Councils

Dog control officers and rangers are now able to seize a dog from private land where the dog is not constrained (ie. loose and unsupervised on an unfenced section), where the dog has been off the property and not under control, or where the dog has been left without access to proper and sufficient food, water or shelter.

From 1 June 2004 the owner of a dog must ensure that either the dog is under the direct control of a person, or confined within the land or premises in such a manner that it cannot freely leave the land or premises at any time.



Micro-chipping

One of the most controversial changes is the requirement for all dogs registered on or after 1 July 2006, and all dogs classified as either 'dangerous' or 'menacing' since 1 December 2003, to be micro-chipped.

The penalties for breaching the Act have been significantly increased. The maximum penalty for owning a dog that is involved in a serious attack has increased from three months' imprisonment or a fine of up to \$5,000, to three years' imprisonment or a fine of up to \$20,000. Councils have the ability to issue infringement notices imposing instant fines on dog owners.

Conclusion

If you are a dog owner, you need to be aware of your new obligations and ensure that you have an adequately fenced property to avoid breaching the Act.

Source: Client Legal Newsletter, Waikato University

Holidays Act 2003 Update

by Graeme Malone

This Act replaces the Holidays Act 1981 and comes into force on 1 April 2003, with the exception of provisions relating to annual holidays increasing from three to four weeks. The latter provisions take effect from 1 April 2007.

The Act is similar in many respects to the old Act, but does have some important changes which employers should be aware of. Almost certainly your current employment agreements must be amended. In addition to any change in your employment agreements, employers are now required to maintain a significant amount of further data with their payroll (wage and time) records. Employers who fail to do so may end up facing penalties and in addition end up paying employees holiday pay twice.

Employers employing employees on either fixed term agreements or casual employment agreements, particularly where the employees are paid holiday pay with their weekly pay, will also face increased risks.

There are important changes to annual leave, statutory leave, sick pay and record keeping that

Thu	01	January 2004	New Year's Day
Fri	02	January 2004	New Year's Holiday
Mon	02	February 2004	Nelson & Buller Anniversary
Fri	06	February 2004	Waitangi Day
Fri	09	April 2004	Good Friday
Mon	12	April 2004	Easter Monday
Mon	07	June 2004	Queen's Birthday
Mon	25	October 2004	Labour Day
Sat	25	December 2004	Christmas Day
Sun	26	December 2004	Boxing Day
Mon	27	December 2004	Christmas Day Holiday
Tue	28	December 2004	Boxing Day Holiday
Sat	01	January 2005	New Year's Day
Mon	03	January 2005	New Year's Holiday

you need to be familiar with. To help in this regard The Department of Labour maintains a number of fact sheets containing easily accessible information for your reference at <http://www.ers.dol.govt.nz> under the Holidays tag.

Please contact Belinda Fletcher, Phil Bellamy or Graeme Malone from our Employment Law Team if you have a specific question on these changes.

Staff Announcements

Kaye graduated with a Bachelor of Laws in 1993. She was born and bred in Nelson.

Kaye commenced practice in Alexandra and from there moved to Blenheim and Wanganui to broaden her litigation experience.

She returned home to Nelson in 1999 and has been specialising in civil litigation, criminal and traffic matters.

Kaye juggles her career with motherhood and works 30 hours a week in the Nelson office. If she's not in the office, you'll find her in court.



Kaye Smith

As the first point of contact with our office, you are likely to be greeted by our Reception staff, Sharon and Ashley.



Reception/Telephone Personnel
(L) Receptionist/Administrator, Sharon Booth
(R) Office Administrator, Ashley Fleming

Sharon joined us in September 2003 after working for AgriQuality for the previous seven years.

Ashley started with us as a junior office administrator in mid-February and is the firm's second Launchpad scholarship student. Ashley attended Nelson College for Girls up until the end of last year.

Feel free to introduce yourself to Sharon and Ashley the next time you call.



FLETCHER VAUTIER MOORE
LAWYERS

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Motueka 12 Wallace Street, PO Box 23, Tel: (03) 528 7030, Fax: (03) 528 9120

Takaka and Havelock by appointment